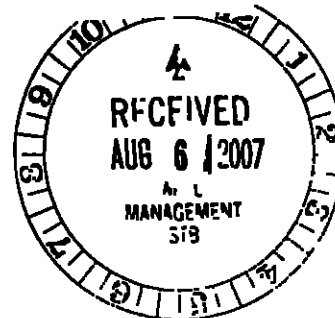


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BEFORE THE  
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO 35067

NORFOLK SOUTHERN RAILWAY COMPANY

- TRACKAGE RIGHTS EXEMPTION -

COMMONWEALTH RAILWAY INCORPORATED

**FEE RECEIVED**  
AUG 6 - 2007  
SURFACE  
TRANSPORTATION BOARD

VERIFIED NOTICE OF EXEMPTION

ENTERED  
Office of Proceedings  
AUG 6 2007  
Part of  
Public Record

**FILED**  
AUG 6 - 2007  
SURFACE  
TRANSPORTATION BOARD

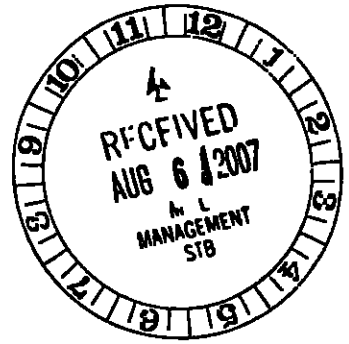
Norfolk Southern Railway Company

James R. Paschall  
Senior General Attorney  
Norfolk Southern Railway Company  
Three Commercial Place  
Norfolk, VA 23510

(757) 629-2759  
Fax (757) 533-4872

Attorney for  
Norfolk Southern Railway Company

Dated August 3, 2007



Before the  
Surface Transportation Board

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STB Finance Docket No 35067

Norfolk Southern Railway Company  
- Trackage Rights Exemption -  
Commonwealth Railway Incorporated

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Verified Notice of Exemption

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Norfolk Southern Railway Company ("NSR") submits this Verified Notice of Exemption, pursuant to 49 C F R. §§ 1180 2(d)(7) and 1180 4(g), for exemption of overhead trackage rights over a line of railroad of Commonwealth Railway Incorporated ("CWR") between approximately Milepost F-9 90 near Churchland, VA and approximately Milepost F-16 50 near Suffolk, VA, a distance of approximately 6 60 miles, in the Cities of Chesapeake, VA and Suffolk, VA (the "Line"), for the purpose of interchange of railcars between NSR and CWR.

The trackage rights are necessary for economy and efficiency of operation of the parties. The trackage rights will permit NSR to access CWR's Marshalling Yard and related mainline trackage, which are designated as "Interchange Tracks," under the parties' agreements, for the purpose of interchange of railcars between NSR and CWR at, or in the vicinity of, the Marshalling Yard.<sup>1</sup>

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<sup>1</sup>CWR currently leases the Line from NSR. Pursuant to a verified notice of exemption in *Commonwealth Railway Incorporated - Acquisition and Operation Exemption - Norfolk Southern Railway Company*, STB Finance Docket No. 34954 (STB

Under 49 C F R §§ 1180.2(d)(7) and 1180 4(g), the acquisition of trackage rights by a rail carrier over lines owned or operated by any other rail carrier or carriers is exempt if the rights are (i) based on written agreements and (ii) not filed or sought in responsive applications in rail consolidation proceedings. The trackage rights that are the subject of this notice of exemption (i) are based on and will be covered by a written agreement, a redacted draft of which is attached as Exhibit 2, and (ii) are not being filed or sought in responsive applications in a rail consolidation proceeding. As such, the 49 C.F.R. § 1180 2(d)(7) exemption is applicable to the subject trackage rights transaction.

In accordance with the requirements of 49 C.F.R. § 1180 4(g), NSR submits the following information:

#### 49 C.F.R. § 1180 6(a)(1) Description of Proposed Transaction

49 C.F.R. § 1180 6(a)(1)(i) A brief summary of the proposed transaction, the name of applicants, their business address, telephone number, and the name of the counsel to whom questions regarding the transaction can be addressed.

The transaction covered by this notice is the acquisition of non-exclusive overhead trackage rights by NSR over a line of railroad of CWRV between approximately Milepost F-9.90 near Churchland, VA and approximately Milepost F-

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served December 21, 2006), CWRV was granted an exemption to acquire and operate approximately 12.5 miles of rail line owned by NSR between Milepost F-4.0 and milepost F-16.5 near Portsmouth, VA. In the notice, CWRV stated that it had agreed to grant NSR and CSX Transportation, Inc. (CSXT) trackage rights over a portion of the rail line between Milepost F-16.5 and approximately milepost F-9.9 to allow each connecting carrier equal access to CWRV and the rail line. NSR seeks the Board's approval for the trackage rights in this separate notice of exemption filing. The parties have not yet consummated the sale transaction, but contemplate that the trackage rights that are the subject of this notice will be effective regardless of whether CWRV is

16.50 near Suffolk, VA, a distance of approximately 6 60 miles, in the Cities of Chesapeake, VA and Suffolk, VA (the "Line"). NSR will use the Line to access CWRV's Marshalling Yard and related mainline trackage, which are designated as "Interchange Tracks" under the parties' agreements, for the purpose of interchange of railcars between NSR and CWRV at, or in the vicinity of, the Marshalling Yard, under the terms of an interchange agreement. NSR will operate its trains, locomotives, cars and equipment with its own crews, in its own account over the Line NSR's access to the Line and the Marshalling Yard will be equal to the access provided to any other carrier[s] connecting with CWRV's line. NSR will not perform any local freight service at any point located on the Line.

The name and business address of the applicant is

Norfolk Southern Railway Company  
Three Commercial Place  
Norfolk, VA 23510

(757) 629-2759

Questions regarding this transaction are to be addressed to counsel named below:

James R Paschall  
Senior General Attorney  
Norfolk Southern Railway Company  
Three Commercial Place  
Norfolk, VA 23510

(757) 629-2759  
Fax (757) 533-4872

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the lessee/operator or the owner/operator of the Line

**49 C F R § 1180 6(a)(1)(ii) The proposed time schedule for consummation of the proposed transaction**

**The Trackage Rights will be consummated on the later of September 3, 2007 or the date that is 30 days from the date the Board receives this filing**

**49 C F R § 1180 6(a)(1)(iii) The purpose sought to be accomplished by the proposed transaction, e g. operating economies, eliminating excess facilities, improving service, or improving the financial viability of the applicants**

**The parties will achieve operating economies and provide improved service through NSR's operation over the Line to access CWRV's Marshalling Yard and related mainline trackage, which are designated as "Interchange Tracks" under the parties' agreements NSR will use CWRV's Line and Marshalling Yard for the purpose of interchange of railcars between NSR and CWRV at, or in the vicinity of, the Marshalling Yard, under the terms of an interchange agreement NSR will operate its trains, locomotives, cars and equipment with its own crews, in its own account over the Line**

**49 C F R § 1180 6(a)(5) States in which the Applicant Has Property**

**A list of the States in which any part of the property of each applicant carrier is situated**

**NSR has property in the States of Alabama, Delaware, Florida, Georgia, Kentucky, Illinois, Indiana, Iowa, Louisiana, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, West Virginia, the District of Columbia and the Province of Ontario, Canada. The Line over which the involved trackage rights are located is in the Commonwealth of Virginia**

**49 C F R. § 1180 6(a)(6) Map (Exhibit 1)**

**49 C F R § 1180 6(a)(6) Submit a general or key map indicating clearly, in separate colors or otherwise, the line(s) of the applicant carriers in their true relations to each other, short line connections, other rail lines in the territory, and the principal geographic points in the region traversed. If a geographically limited transaction is proposed, a map detailing the transaction should also be included. In addition to the map accompanying each application, 20 unbound copies of the map shall be filed with the Board.**

**A map is provided as Exhibit I. Twenty unbound copies of the map accompany this filing to the Board.**

**49 C F R § 1180.6(7)(ii) Agreement (Exhibit 2)**

**49 C.F.R. § 1180 6(a)(7)(ii) Submit a copy of any contract or other written instrument entered into, or proposed to be entered into, pertaining to the proposed transaction. In addition, parties to exempt trackage rights agreements and renewal of agreements described at § 1180 2(d)(7) must submit one copy of the executed agreement or renewal agreement with the notice of exemption, or within 10 days of the date that the agreement is executed, whichever is later.**

**A redacted version of the draft trackage rights agreement showing the principal terms proposed, except for confidential and commercially sensitive terms, is attached as Exhibit 2. NSR is submitting the full version of the draft agreement, as required by 49 C.F.R. 1180 6(a)(7)(ii), concurrently under seal along with a motion for protective order to protect the confidential and commercially sensitive terms and conditions of both the unredacted draft trackage rights agreement and of the final executed trackage rights agreement when it is filed with the Board. The final executed trackage rights agreement will be filed with the Board within 10 days of the date of its execution, pursuant to 49 C F.R. 1180.6(a)(7)(ii).**

**49 C F.R. § 1180.4(g)(1)(i) Labor Protection**

**49 C F R. § 1180.4(g)(1)(i) The notice shall contain the information required in and indicate the level of labor protection to be imposed**

**As a condition to this exemption, NSR is agreeable to the imposition of the labor protection conditions generally imposed in trackage rights proceedings as found in *Norfolk and Western Ry Co - Trackage Rights - BN*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast R. Inc. - Lease and Operate*, 360 I C C 653 (1980)**

**49 C.F R. § 1180 4(g)(2)(i) Caption Summary (Exhibit 3)**

**49 C F R § 1180 4(g)(2)(i) To qualify for an exemption under Sec 1180.2(d)(7) (acquisition or renewal of trackage rights agreements), in addition to the notice, the railroad must file a caption summary suitable for publication in the Federal Register The caption summary must be in the following form.**

**A caption summary of this transaction suitable for publication in the Federal Register is attached as Exhibit 3**

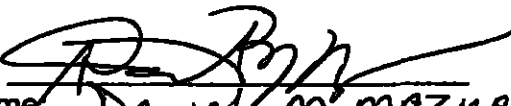
49 C F R. § 1180.4(g)(3) Environmental Documentation  
49 C F.R § 1105.8(b)(3) Historic Report

Environmental documentation is not required for this trackage rights transaction.

See 49 C.F.R § 1105 6(c)(4) An historic report is not required for this trackage rights transaction See 49 C F R § 1105 8(b)(3)

Respectfully submitted,

NORFOLK SOUTHERN RAILWAY COMPANY

By:   
Name: Daniel M. MAZUR  
Title: VP Strategic Planning


James R Paschall  
Senior General Attorney  
Norfolk Southern Railway Company  
Three Commercial Place  
Norfolk, VA 23510  
(757) 629-2759  
Fax (757) 533-4872

Dated August 1, 2007



Commonwealth of Virginia )  
 ) ss  
Crty of Norfolk )

  
Daniel M. Mazur

1<sup>st</sup> day of August, 2007.  
  
 \_\_\_\_\_  
 Notary Public

A circular notary seal for Lisa Holloman, Notary Public. The seal contains the text: LISA HOLLOMAN, NOTARY PUBLIC, REG # 216595, MY COMMISSION EXPIRES 11/30/2009, and COMMONWEALTH OF VIRGINIA. The seal is surrounded by a decorative border of small dots.

# CERTIFICATE OF SERVICE

I hereby certify that on this 3<sup>rd</sup> day of August 2007, I served a copy of the foregoing Verified Notice of Exemption by causing copies thereof to be deposited in the United States mail, postage prepaid, addressed to the following parties

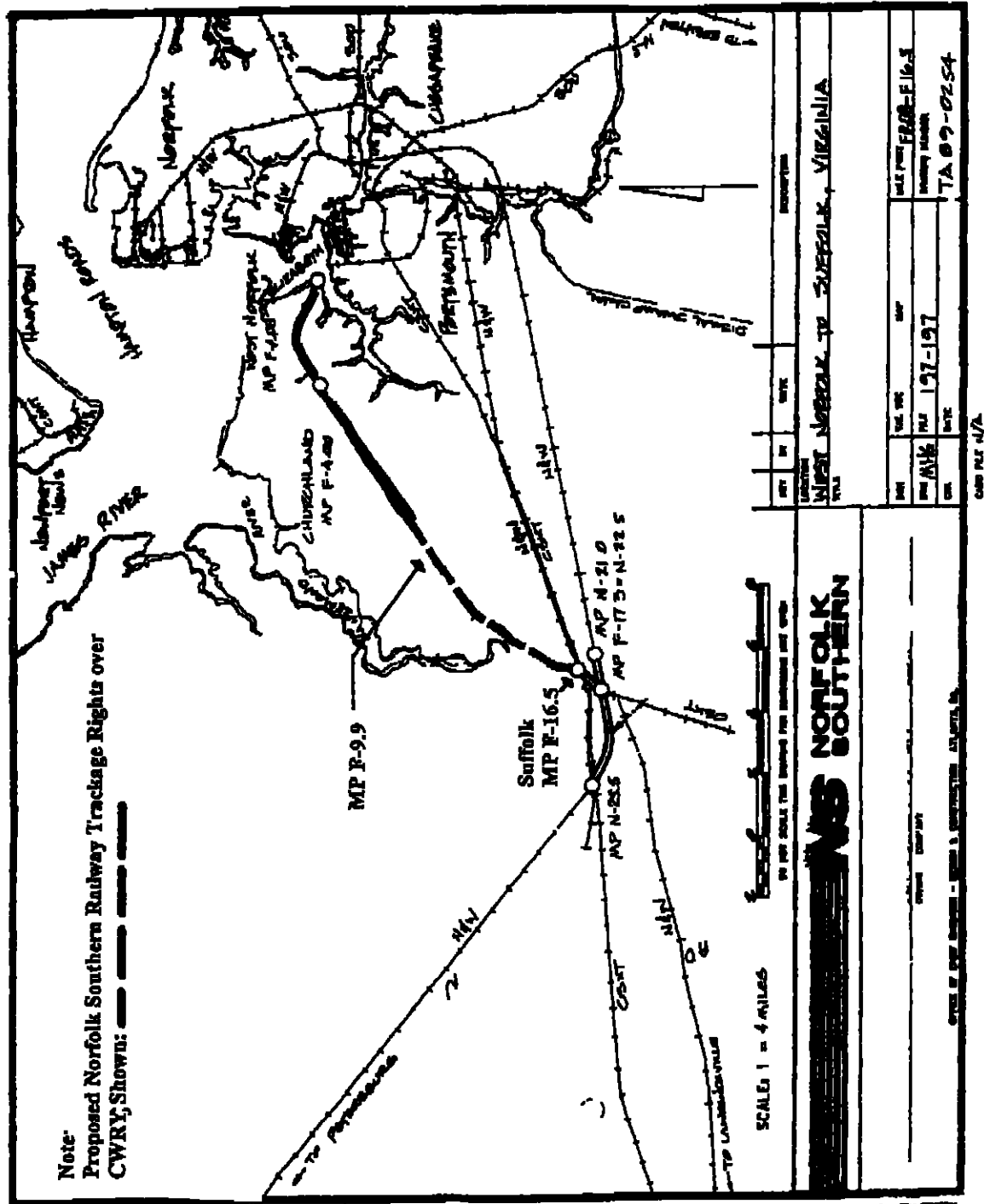
Eric M Hocky, Esq  
Gollatz, Griffin & Ewing  
Four Penn Center, Suite 200  
1600 John F Kennedy Blvd  
Philadelphia, PA 19103-2808

Virginia Department of Rail and Public Transportation  
P O Box 590  
Richmond, VA 23218-0590  
Attention Kevin B Page, Director of Rail Transportation

  
\_\_\_\_\_  
James R Paschall

**Note-**

## Proposed Norfolk Southern Railway Trackage Rights over CWRV, Shown: ~~How~~ ~~Not~~ ~~to~~ ~~Deal~~



## **EXHIBIT 2**

### **DRAFT TRACKAGE RIGHTS AGREEMENT**

**See the attached redacted version of the draft trackage rights agreement showing the principal terms proposed, except for confidential and commercially sensitive terms. NSR is submitting the full version of the draft agreement, as required by 49 C.F.R. 1180.6(a)(7)(ii), concurrently under seal along with a motion for protective order to protect the confidential and commercially sensitive terms and conditions of both the unredacted draft trackage rights agreement and of the final executed trackage rights agreement when it is filed with the Board. The final executed trackage rights agreement will be filed with the Board within 10 days of the date of its execution, pursuant to 49 C.F.R. 1180.6(a)(7)(ii).**

## **EXHIBIT 3**

### **CAPTION SUMMARY**

SERVICE DATE – \_\_\_\_\_, 2007

DO \_\_\_\_\_  
FR-\_\_\_\_\_-\_\_\_\_\_-\_\_\_\_\_-

**DEPARTMENT OF TRANSPORTATION**

**Surface Transportation Board**

**[STB Finance Docket No 35067]**

**Norfolk Southern Railway Company - Trackage Rights Exemption - Commonwealth Railway Incorporated**

Pursuant to a written trackage rights agreement,<sup>1</sup> Commonwealth Railway Incorporated ("CWRV"), will agree to grant to Norfolk Southern Railway Company ("NSR") non-exclusive overhead trackage rights over a CWRV line of railroad between approximately Milepost F-9.90 near Churchland, VA and approximately Milepost F-16 50 near Suffolk, VA, a distance of approximately 6 60 miles, in the Cities of Chesapeake, VA and Suffolk, VA (the "Line")

The purpose of the transaction is for the parties to achieve operating economies and improved service through NSR's operation of its trains, locomotives, cars and equipment with its own crews, in its own account, over the Line to access CWRV's Marshalling Yard and related mainline trackage for the purpose of interchange of railcars between NSR and CWRV. NSR will perform no local service on the Line

This transaction is scheduled to be consummated on the later of September 3, 2007 or the effective date of the exemption (30 days after the exemption was filed)

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in Norfolk and Western Ry. Co. - Trackage Rights - BN, 354 I C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc. - Lease

and Operate, 360 I C C. 653 (1980)

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by \_\_\_\_\_, 2007 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35067, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on James R. Paschall, Senior General Attorney, Norfolk Southern Railway Company, Three Commercial Place, Norfolk, VA 23510.

Board decisions and notices are available on our website at  
"WWW.STB.DOT.GOV"

Decided \_\_\_\_\_, 2007

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams  
Secretary

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[1] A redacted version of the draft trackage rights agreement between NSR and CWR was filed with the notice of exemption. The full version of the draft agreement, as required by 49 C.F.R. 1180.6(a)(7)(ii), was concurrently filed under seal along with a motion for protective order. The request for a protective order is being addressed in a separate decision. Pursuant to 49 CFR 1180.6(a)(7)(ii), NSR states that it will file the final executed trackage rights agreement with the Board within 10 days of the date of its execution. NSR requests that the final executed agreement also be subject to the requested protective order.

**"PUBLIC VERSION"**  
**SUBMITTED IN STB FINANCE DOCKET NO. 35067**

**DRAFT OF 7-30-07**  
**NOT FINAL LANGUAGE / SOME POSSIBLE REVISIONS NOTED**

**TRACKAGE RIGHTS AGREEMENT**

**THIS TRACKAGE RIGHTS AGREEMENT** (hereinafter referred to as "Agreement") made this \_\_\_\_ day of \_\_\_\_\_, 2007, by and between **COMMONWEALTH RAILWAY INCORPORATED** a Virginia corporation (hereinafter referred to as "CWRV" or "Owner") and **NORFOLK SOUTHERN RAILWAY COMPANY** a Virginia corporation (hereinafter referred to as "NSR" or "USER"),

**WITNESSETH**

**WHEREAS**, NSR entered into a Lease Agreement dated August 23, 1989, whereby, among other things, NSR leased a portion of its West Norfolk Branch of railroad between Milepost F-4 00 at Churchland, City of Chesapeake, Virginia, and Milepost F-16.50 at Suffolk, Virginia (hereinafter referred to as "Leased Property") to CWRV for continued operation of rail services; and

**WHEREAS**, NSR also granted to CWRV, the exclusive option to purchase the Leased Property; and

**WHEREAS**, CWRV has exercised its exclusive option to purchase the Leased Property,

**WHEREAS**, CWRV is willing to allow NSR the right to use the Subject Trackage, as that term is defined below, on the terms and conditions hereinafter set forth; and

**WHEREAS**, CWRV is also granting CSX Transportation, Inc. ("CSXT") equal access to use the Subject Trackage;

**NOW, THEREFORE**, the parties agree as follows.

**Section 1. GRANT OF TRACKAGE RIGHTS**

- (A) Subject to the terms and conditions herein provided, Owner hereby grants to User the right to operate its trains, locomotives, cars and equipment with its own crews, in its own account over the segment of Owner's railroad from Milepost F-9.90 near Churchland, VA and Milepost F-16.50 near Suffolk,



**"PUBLIC VERSION"**  
**SUBMITTED IN STB FINANCE DOCKET NO. 35067**

VA, a distance of approximately 6.60 miles as illustrated on the map attached hereto, made a part hereof and marked Exhibit "I" (hereinafter referred to as the "Subject Trackage") The Subject Trackage shall be used for the purpose of accessing Owner's Marshalling Yard and related mainline trackage which are designated as "Interchange Tracks" in a separate *Interchange Agreement of even date hereto between Owner and User.*

- (B) User's access to the Subject Trackage and the Marshalling Yard shall be equal to the access provided to any other carrier[s] connecting with Owner's line.

**Section 2. USE OF SUBJECT TRACKAGE**

- (A) User's use of the Subject Trackage shall be in common with Owner and any other user of the Subject Trackage, and Owner's right to use the Subject Trackage shall not be diminished by this Agreement. Owner shall retain the exclusive right to grant to other persons rights of any nature in the Subject Trackage, subject to the provisions of Section 1(B)
- (B) Except as may otherwise be provided by this Agreement or the aforementioned Interchange Agreement, User shall not use any part of the Subject Trackage for the purpose of switching, storage or servicing cars or equipment, or the making or breaking up of trains, except that nothing contained herein, upon prior approval of Owner, shall preclude the emergency use by User of such auxiliary tracks as may be designated by Owner for such purposes
- (C) Owner shall have exclusive control of the management and operation of the Subject Trackage, [REDACTED]. User shall not have any claim against Owner for liability account of loss or damage of any kind in the event the use of the Subject Trackage by User is interrupted or delayed at any time from any cause.
- (D) User may not grant rights of any nature on the Subject Trackage to other parties, or use the rights to haul traffic in the account of any other carrier
- (E) User shall have the right to operate in either direction of the Subject Trackage.

**Section 3. RESTRICTION ON USE**

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**SUBMITTED IN STB FINANCE DOCKET NO. 35067**

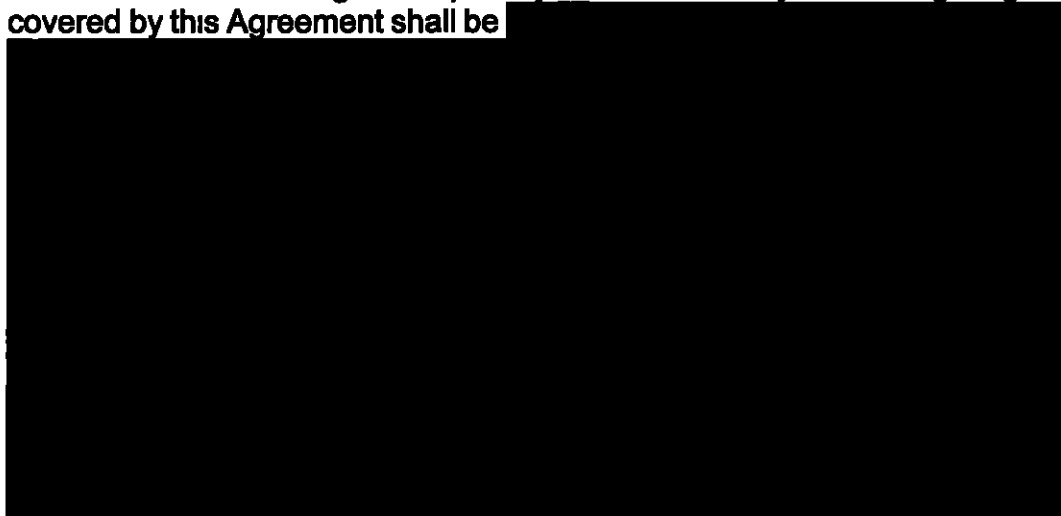
The Subject Trackage Rights herein granted are granted for the purpose of User using Subject Trackage to interchange railcars with Owner at, or in the vicinity of, Owner's Marshalling Yard in accordance with the aforementioned Interchange Agreement. Except as provided for in Section 1(B), User shall not perform any local freight service whatsoever at any point located on Subject Trackage. Further, User may not use the Subject Trackage or the rights granted hereunder to interchange with any other carrier that, now or in the future, connects with the Subject Trackage.

**Section 4    MISCELLANEOUS SPECIAL PROVISIONS**

- (A)    When operating over the Subject Trackage, User's locomotives and crews will be equipped to communicate with Owner on radio frequencies normally used by Owner in directing train movements (in accordance with Section 10[J]) on the Subject Trackage.
- (B)    Procedures for qualification and occupancy of the Subject Trackage will be arranged by the local supervision of each carrier. All control and usage will be subject to the approval of Owner's representative or his designee.
- (C)    Before User enters upon the Subject Trackage with its trains from either direction, User must verify with Owner that User has the ability to make a complete and continuous, uninterrupted movement to the other end of the Subject Trackage.

**Section 5.    COMPENSATION**

- (A)    The initial Current Charge to be paid by User for the Subject Trackage Rights covered by this Agreement shall be



**"PUBLIC VERSION"**  
**SUBMITTED IN STB FINANCE DOCKET NO. 35067**

[REDACTED] The Current Charge shall be subject to change to reflect any increase or decrease subsequent to the Effective Date of this Agreement in labor, material and other costs, as more fully set forth below.

(B) Owner shall issue a monthly invoice to User which shall include a statement which shall list the number of cars and the miles operated on the Subject Trackage, computed in accordance with this Section 5.

(C) The Current Charge set forth in Section 5 (A) hereof shall be revised [REDACTED]

(D) In the event [REDACTED]

(E) [REDACTED]

**Section 6. PAYMENT OF BILLS**

(A) All payments called for under this Agreement shall be made within [REDACTED] No payments shall be withheld because of any dispute as to the correctness of items in the bills rendered, and any discrepancies reconciled between the parties hereto shall be

**"PUBLIC VERSION"**  
**SUBMITTED IN STB FINANCE DOCKET NO. 35067**

adjusted in the accounts of a subsequent month. The records of each party hereto, insofar as they pertain to matters covered by this Agreement, shall be open at all reasonable times to inspection by the other party for a period of three (3) years from the date of the billing or other applicable activity

- (B) Bills rendered pursuant to the provisions of this Agreement, other than those provided for in Section 5, shall include direct labor and material costs, together with the surcharges, overhead percentages and equipment rentals as specified by Owner at the time any work is performed by Owner for User or shall include actual costs and expenses, upon mutual agreement of the parties

**Section 7. MAINTENANCE OF SUBJECT TRACK**

- (A) Owner shall maintain, repair and renew the Subject Trackage with its own supervision and labor. Owner shall keep and maintain the Subject Trackage in reasonably good condition for the use contemplated, but Owner does not guarantee the condition of the Subject Trackage or that operations thereover will not be interrupted. **[MAINTENANCE STANDARDS STILL UNDER DISCUSSION]**



Owner shall take reasonable steps to ensure that any interruptions will be kept to a minimum and shall use reasonable efforts to avoid such interruptions. User shall not by reason of failure or neglect on the part of Owner to maintain, repair or renew the Subject Trackage have or make any claim or demand against Owner or its parent corporation, subsidiaries or affiliates, or their respective directors, officers, agents or employees for any injury to or death of any person or persons whomsoever, or for any damage to or loss or destruction of any property whatsoever, or for any damages of any nature suffered by User resulting from any such failure or neglect

- (B) Owner shall perform, at the sole expense of User and within a time period that is acceptable to User, such additional maintenance as User may reasonably require or request on the Subject Trackage and/or Subject Local-Access Trackage

**Section 8. CONSTRUCTION AND MAINTENANCE OF CONNECTIONS**

**"PUBLIC VERSION"**  
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- (A) Existing or proposed connections or facilities, which are jointly used by the parties hereto or other carrier(s) under existing or proposed agreements, shall be maintained, repaired and renewed by and at the expense of the party or parties responsible for such maintenance, repair and renewal under such agreements
- (B) If, in the opinion of User, a new or upgraded connection is required at a point of permitted entry or exit other than the endpoints (other than such connection[s] being handled between Owner and any other carrier[s]), or, if in the opinion of User, other upgrading, including but not limited to switches, power switches, signals, communications, etc , is required for operational efficiency, then Owner will, subject to its own operational needs, cooperate and User will be responsible for funding that construction/upgrading applicable to User at actual cost or a cost mutually agreed to by Owner and User. Such construction/upgrading shall be progressed as follows
  - (i) User or others shall furnish all labor and materials and shall construct such portions of the tracks located on the right-of-way of User or others, which connect the respective lines of the parties hereto and/or other carrier(s)
  - (ii) Owner shall furnish all labor and material and shall construct such portions of the tracks located on the right-of-way of Owner, which connect the respective lines of the parties hereto and/or other carrier(s). Upon termination of this Agreement, Owner may at its option remove any portion of the Subject Trackage and appurtenances located on Owner's right-of-way, constructed as a result of this Article, at the sole cost and expense of User. The salvage material removed shall be released to User or, as otherwise agreed upon, Owner will credit User the current fair market value for said salvage
  - (iii) Owner will maintain, repair and renew the constructed/upgraded portions of the tracks located on the right of way operated by Owner which connect the respective lines of the parties hereto at the sole cost and expense of User and/or other carrier(s).

**Section 9. ADDITIONS, RETIREMENTS AND ALTERATIONS**

- (A) Owner, from time to time and at its sole cost and expense, may make changes in, additions and betterment to, or retirements from, the Subject Trackage as shall, in its judgment, be necessary or desirable for the economical or safe operation thereof or as shall be required by any law, rule,

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regulation, or ordinance promulgated by any governmental body having jurisdiction. Such additions and betterments shall become a part of the Subject Trackage and such retirements shall be excluded from the Subject Trackage.

- (B) If the parties agree that changes in or additions and betterment to the Subject Trackage, including changes in communication or signal facilities, are required to accommodate the operations of User and/or other carrier(s) beyond that required by Owner to accommodate its operations, Owner shall construct the additional or altered facilities and User and/or other carrier(s) shall pay to Owner the cost thereof, including the annual expense of maintaining, repairing and renewing such additional or altered facilities.

**Section 10. MANAGEMENT AND OPERATIONS**

- (A) User shall comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Act, as amended, and any other federal and state and local laws, regulations and rules respecting the operation, condition, inspection and safety of its trains, locomotives, cars and equipment while such trains, locomotives, cars, and equipment are being operated over the Subject Trackage. User shall indemnify, protect, defend, and save harmless Owner and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against all fines, penalties and liabilities (including reasonable attorneys fees and expenses and court and litigation costs) ("Costs") imposed upon Owner or its parent corporation, subsidiaries or affiliates, or their respective directors, officers, agents and employees under such laws, rules, and regulations by any public authority or court having jurisdiction in the premises, to the extent such Costs are attributable to the failure of User to comply with its obligations in this regard.
- (B) User in its use of the Subject Trackage shall comply in all respects with the safety rules, operating rules and other regulations of Owner, and the movement of User's trains, locomotives, cars, and equipment over the Subject Trackage shall at all times be subject to the orders of the transportation officers of Owner. User's trains shall not include locomotives, cars or equipment which exceed the width, height, weight or other restrictions or capacities of the Subject Trackage as published in Railway Line Clearances or as contained herein, and no train shall contain locomotives, cars or equipment which require speed restrictions or other movement restrictions below the maximum authorized freight speeds as provided by Owner's operating rules and regulations or contained herein without the prior consent of Owner.

**"PUBLIC VERSION"**  
**SUBMITTED IN STB FINANCE DOCKET NO. 35067**

- (C) User shall make such arrangements with Owner as may be required to have all of its employees who shall operate its trains, locomotives, cars and equipment over the Subject Trackage qualified for operation thereover, and User shall pay to Owner, upon receipt of bills therefor, any cost incurred by Owner in connection with the qualification of such employees of User, as well as the cost of pilots furnished by Owner, until such time as such employees are deemed by the appropriate examining officer of Owner to be properly qualified for operation as herein contemplated.
- (D) If any employee of User shall neglect, refuse or fail to abide by Owner's rules, instructions and restrictions governing the operation on or along Owner's property, such employee shall, upon written request of Owner, be prohibited by Owner from working on Owner's property. If any party (CWRY, for itself and, for the purpose of this Agreement, any other carrier[s]) shall deem it necessary to hold a formal investigation to establish such neglect, refusal or failure on the part of any employee of User, then upon such notice presented in writing, User shall promptly hold an investigation in which all parties concerned shall participate and bear the expense for its officers, counsel, witnesses and employees. Notice of such investigations to User's employees shall be given by User's officers, and such investigation shall be conducted in accordance with the terms and conditions of schedule agreements between User and its employees. If the result of such investigation warrants, such employee shall, upon written request by Owner, be withdrawn by User from service on Owner's property, and User shall release and indemnify Owner from and against any and all claims and expenses because of such withdrawal
- (E) Owner shall have the right to exclude from the Subject Trackage any employee of User determined by the above, to be in violation of Owner's rules, regulations, orders, practices, or instructions issued by Owner's Timetable or otherwise. User shall release, indemnify, defend, and save harmless Owner and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against any and all claims and expenses resulting from such exclusion.
- (F) The trains, locomotives, cars and equipment of User, Owner, and any other present or future user of the Subject Trackage or any portion thereof, shall be operated without prejudice or partiality to any party and in such manner as will afford the most economical and efficient movement of all traffic.
- (G) In the event that a train of User shall be forced to stop on the Subject Trackage, due to mechanical failure of User's equipment, or any other cause

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not resulting from an accident or derailment, and such train is unable to proceed, or if a train of User fails to maintain the speed required by Owner on the Subject Trackage, or if in emergencies, crippled or otherwise defective cars are set out of User's trains on the Subject Trackage, Owner shall have the option to furnish motive power or such other assistance as may be necessary to haul, help or push such trains, locomotives or cars, or to properly move the disabled equipment off the Subject Trackage, and User shall reimburse Owner for the cost of rendering any such assistance

- (H) If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars in order to move them off the Subject Trackage, such work shall be done by Owner or its agents or contractors (unless the local operating officers agree for User to perform such work), and User shall reimburse Owner for the cost thereof
- (I) In the event Owner and User agree that Owner should retain employees or provide additional employees for the sole benefit of User, the parties hereto shall enter into a separate agreement under which User shall bear all cost and expense for any such retained or additional employees provided, including without limitation all cost and expense associated with labor protective payments which are made by Owner and which would not have been incurred had the retained or additional employees not been provided

(J)



**Section 11. MILEAGE AND CAR HIRE**

All mileage and car hire charges accruing on cars in User's trains on the Subject Trackage shall be assumed by User and reported and paid by it directly to the owner of such cars.

**Section 12. CLEARING OF WRECKS**

Whenever User's use of the Subject Trackage requires rerailing, wrecking service or wrecking train service, Owner or its agent or contractor (unless the local operating officers agree for User to perform such work) shall perform or provide such service, including the



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repair and restoration of roadbed, track and structures. The cost, liability and expense of the foregoing, including without limitation loss of, damage to, or destruction of any property whatsoever and injury to and death of any person or persons whomsoever or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, resulting therefrom, shall be apportioned in accordance with the provisions of Section 13 hereof. All locomotives, cars, and equipment and salvage from the same so picked up and removed which is owned by or under the management and control of or used by User at the time of such wreck, shall be promptly delivered to it.

**Section 13. LIABILITY**

**[LIABILITY STANDARDS STILL UNDER DISCUSSION]**

The responsibility of the parties hereto as between themselves for loss of, damage to, or destruction of any property whatsoever or injury to or death of any person or persons whomsoever, resulting from, arising out of, incidental to, or occurring in connection with the Trackage Rights granted in this Agreement, shall be determined as follows:

- (A) Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, occurs with the trains, locomotives, cars, or equipment of, or in the account of, CWRV or a third party being involved, without the trains, locomotives, cars, or equipment of, or in the account of, NSR being involved, as between NSR and CWRV, CWRV shall assume all liability therefor and bear all cost and expense in connection therewith, including without limitation all cost and expense referred to in Section 12 hereof, and shall forever protect, defend, indemnify, and save harmless NSR and its directors, officers, agents, and employees from and against any such liability, cost, and expense, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of NSR or its directors, officers, agents or employees.
- (B) Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, occurs with the trains, locomotives, cars, or equipment of, or in the account of, NSR being involved, without the trains, locomotives, cars, or equipment of, or in the account of, CWRV or any other carrier(s) being involved, NSR shall assume all liability therefor, and bear all cost and expense in connection therewith, including without limitation all cost and expense referred to in Section 12 hereof, and shall forever protect, defend, indemnify, and save harmless CWRV and its directors, officers, agents, and employees from and against any such liability, cost, and

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expense, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of CWRV or its directors, officers, agents, or employees.

- (C) Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, occurs with the trains, locomotives, cars, or equipment of, or in the account of, both NSR and CWRV (and/or any other carrier[s]) being involved, NSR and CWRV (for itself and, for the purpose of this Agreement, any other carrier[s]) shall separately assume and bear all liability, cost, and expense for loss of, and damage to said trains, locomotives, cars (including without limitation lading), and equipment operated by each of them and for injury to and death of each of their directors, officers, agents, and employees, and persons in each of their care and custody. All liability, cost, and expense for injury to and death of any other person or persons whomsoever, for loss of, damage to, or destruction of all other property (including without limitation the Subject Trackage) and for any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, so occurring shall be borne equally by NSR and CWRV (for itself and, for the purpose of this Agreement, any other carrier[s]), including without limitation all cost and expense referred to in Section 12 hereof.
- (D) Notwithstanding any other provisions of this Agreement, each party shall be responsible for liability for any death, personal injury, or damage to property to the extent such death, personal injury, or damage to property was caused by acts or omissions of any of that party's employees while under the influence of drugs or alcohol. An FRA positive test for drugs or a FRA alcohol test of .04 or greater shall establish that an employee was under the influence of drugs or alcohol, for the purposes of this Section 13.
- (E) Whenever any liability, cost, or expense is assumed by or apportioned to a party hereto under the foregoing provisions, that party shall forever protect, defend, indemnify, and save harmless the other party to this Agreement and its directors, officers, agents, and employees from and against that liability, cost, and expense assumed by that party or apportioned to it, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of the indemnitee or its directors, officers, agents or employees.
- (F) In every case of death or injury suffered by an employee of either CWRV (for itself and, for the purpose of this Agreement, any other carrier[s]) or NSR,

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when compensation to such employee or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employer's liability, or other law, and either of said parties under the provisions of this Agreement is required to pay said compensation, if such compensation is required to be paid in installments over a period of time, such party shall not be released from paying any such future installments by reason of the expiration or other termination of this Agreement prior to any of the respective dates upon which any such future installments are to be paid.

(G) Notwithstanding the provisions of Section 19(F) of this Agreement, for the purposes of this Section 13, the word "equipment" shall mean and be confined to (i) cabooses, (ii) vehicles and machinery which are capable of being operated on railroad tracks that, at the time of an occurrence, are being operated on the Subject Trackage, and (iii) vehicles and machinery that, at the time of an occurrence, are on the Subject Trackage or its right-of-way for the purpose of the maintenance or repair thereof or the clearing of wrecks thereon.

(H) The terms "liability," "damage," "damages," or "injury" as used in this Section 13 shall include related court costs, expenses, and attorney's fees. Liability shall not include fines and penalties, which shall always be paid by the party against whom they were assessed.

(I) Under no circumstances will either of the parties to this Agreement assert a claim for punitive or exemplary damages against the other party.

**Section 14. INVESTIGATION**

(A) Except as provided in Subsection (B) hereof, all claims, injuries, deaths, property damages, and losses arising out of or connected with this Agreement shall be investigated, adjusted, and defended by the party bearing the liability, cost, and expense therefor under the provisions of this Agreement.

(B) Each party will investigate, adjust, and defend all freight loss and damage claims filed with it in accordance with 49 U.S.C. Section 11706 or 49 C.F.R. Section 1005, or in accordance with any applicable transportation contract made pursuant to 49 U.S.C. Section 10709.

(C) In the event a claim or suit is asserted against CWRY (for itself and, for the purpose of this Agreement, any other carrier[s]) or NSR which is the other's duty hereunder to investigate, adjust, or defend, then, unless otherwise agreed, such other party shall, upon request, take over the investigation,

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adjustment, and defense of such claim or suit

- (D) All costs and expenses in connection with the investigation, adjustment, and defense of any claim or suit under this Agreement shall be included as costs and expenses in applying the liability provisions set forth in this Agreement, except that salaries or wages of full-time claim agents, full-time attorneys, and other full-time employees of either party engaged directly or indirectly in such work shall be borne by such party.
- (E) Excluding freight loss and damage claims filed in accordance with 49 U.S.C. Section 11706 or 49 C.F.R. Section 1005, or in accordance with any applicable transportation contract made pursuant to 49 U.S.C. Section 10709, neither party shall settle or compromise any claim, demand, suit, or cause of action for which the other party (CWRV, for itself and, for the purpose of this Agreement, any other carrier[s]) has any liability under this Agreement without the concurrence of such other party (CWRV, for itself and, for the purpose of this Agreement, any other carrier[s]) if the consideration for such settlement or compromise exceeds [REDACTED]
- (F) It is understood that nothing in this Section shall modify or waive the conditions, obligations, assumptions, or apportionments provided in Section 13 hereof.

**Section 15. CLAIMS**

- (A) The parties shall agree between themselves on the most fair, practical and efficient arrangements for handling and administering freight loss and damage claims with the intent that (i) each party shall be responsible for losses occurring to lading in its possession for the account of such party and (ii) the parties shall follow relevant AAR rules and formulas in providing for the allocation of losses which are either of undetermined origin or in cars handled in interline service by or for the account of the parties.
- (B) Each party shall indemnify and hold harmless the other parties against any and all costs and payments, including benefits, allowances, and arbitration, administrative and litigation expenses, arising out of claims or grievances made by or on behalf of or lawsuits brought by or on behalf of its own employees or their collective bargaining representatives, either pursuant to employee protective conditions imposed by a governmental agency upon the agency's approval or exemption of this Agreement and operations hereunder or pursuant to a collective bargaining agreement. It is the parties' intention

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that each party shall bear the full costs of protection of its own employees under employee protective conditions that may be imposed, and of grievances filed by its own employees arising under its collective bargaining agreements with its employees

**Section 16. TERM, DEFAULT AND TERMINATION**

- (A) This Agreement shall become effective (hereinafter referred to as "Commencement Date") as of the first date signed by both Owner and User, and if required, following receipt of any regulatory approvals to be obtained by NSR under Section 17, and following the expiration of any time periods required by the issuance of labor notices by Owner and/or User, and shall remain in full force and effect for a period of ninety-nine (99) years. User shall have the option, of extending this Agreement for additional terms of 99 years by notice in writing given at least (6) months prior to the end of the current term. The provisions of Section 1(B) shall become effective as provided for in that Section.
- (B) Termination of this Agreement shall not relieve or release either party hereto from any obligations assumed or from any liability which may have arisen or been incurred by such party under the terms of this Agreement prior to termination thereof.
- (C) In the event of any substantial failure on the part of User to perform its obligations provided under the terms of this Trackage Rights Agreement and its continuance in such default for a period of sixty (60) days after written notice thereof by certified mail from Owner, Owner shall have the right at its option, after first giving thirty (30) days written notice thereof by certified mail, and notwithstanding any waiver by Owner of any prior breach thereof, to terminate the Agreement. The exercise of such right by Owner shall not impair its rights under this Agreement or any cause or causes of action it may have against User for the recovery of damages.
- (D) The rights, benefits, duties and obligations running from or to User under this Agreement shall in all events expire (except liabilities incurred prior to termination) upon termination of this Agreement.
- (E) In the event that the conveyance of the Leased Property from NSR to CWRV is not completed for any reason, this Agreement will still become effective as provided for in Section 16(A).

**Section 17. REGULATORY APPROVAL**

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The parties agree that this Agreement, or portions of this Agreement, will be submitted at NSR's sole expense, to the STB for approval. CWRV agrees to support NSR's submission(s) to the STB. User shall provide a draft of any filing to CWRV for its review prior to filing

**Section 18. ABANDONMENT OF SUBJECT TRACKAGE**

- (A) Owner shall have the right, subject to securing any necessary regulatory approval, to abandon the Subject Trackage. Before filing an application for regulatory approval of such abandonment, Owner shall give User ninety (90) days' advance notice in writing of its intention to do so in order that User may determine whether it desires to purchase the Subject Trackage.
- (B) **[OFA RIGHTS STILL UNDER DISCUSSION]** If User desires to purchase the Subject Trackage, it shall submit an offer of financial assistance under 49 U S C Section 10904. [REDACTED]
- (C) In any one of the circumstances listed below, User shall be deemed to have determined that it does not desire to purchase the Subject Trackage and that it desires to discontinue its use thereof:
  - (i) User fails to submit an offer of financial assistance to purchase the Subject Trackage within the time prescribed by statute and applicable regulations, or
  - (ii) User, having made an offer of financial assistance to purchase the Subject Trackage, but being unable to reach agreement with Owner as to the sale price, fails within the statutory period to request the proper regulatory authority to establish the terms and conditions of the sale, or
  - (iii) User, having requested the proper regulatory authority to establish the terms and conditions of sale, withdraws its offer of financial assistance, or
  - (iv) User, having requested the proper regulatory authority to establish the terms of the sale, rejects the authority's order establishing said terms or fails to accept said terms within the time prescribed by said order.

In such event User shall promptly file an application with the proper

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regulatory authority seeking approval of the discontinuance of its operations over the Subject Trackage. If User does not file an application seeking approval of the discontinuance of User's operations over the Subject Trackage within ninety (90) days, Owner shall be deemed to have been given User's power of attorney to take such action on User's behalf.

- (D) In the event any application filed by Owner is granted but an application filed by User under Sub-section (C) above is denied by the proper regulatory authority, the parties shall cooperate in taking such action as is reasonably necessary to effect a sale of the Subject Trackage to User (including securing any necessary regulatory authority) for a price consistent with the principles of 49 U.S.C. Section 10904.
- (E) In the event Owner abandons the Subject Trackage (or portion thereof) under circumstances which (because of changes in the law or otherwise) are not susceptible of handling under the procedures outlined above, the parties shall cooperate and take such action as is necessary to assure that User either promptly terminates its operations over the segment to be abandoned or purchases said segment at a price consistent with the principles of 49 U.S.C. Section 10904 as interpreted on the date of this Agreement.
- (F) In the event Owner's application for authority to abandon is denied, Owner and/or User will withdraw any application(s) it (they) has (have) filed under Sub-section (C) above.
- (G) Except as otherwise expressly agreed in writing, in the event any actions taken by the parties under this Article 18 result in an obligation imposed by any competent authority on any party hereto to protect the interests of affected employees, the responsibility for bearing the cost thereof shall be borne by the party (CWRV, for itself and, for the purpose of this Agreement, any other carrier[s]) which is the employer of the affected employee or employees, notwithstanding the manner in which said cost may be apportioned in any order or decision imposing the protection.

**Section 19. ARBITRATION**

- (A) **[ARBITRATION PROCEDURES STILL UNDER DISCUSSION]** Any irreconcilable dispute arising between the parties hereto with respect to any of the provisions of this Agreement, except for those provisions relating to equal access of NS to CWRV, which cannot be settled by the parties themselves shall be settled through binding arbitration by a sole, disinterested arbitrator knowledgeable in railroad matters to be selected jointly by the parties in accordance with the rules of the International Institute

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for Conflict Prevention & Resolution ("CPR"). With respect to provisions of this Agreement relating to equal access of NS to CWRV, if such a dispute cannot be settled by the parties themselves, the matter shall be settled *through binding arbitration under the Fast Track Arbitration Rules of CPR*, as modified by the parties as shown in Exhibit 2. In either arbitration situation, the arbiter shall not have the power to award consequential or punitive damages or to determine violations of criminal laws or antitrust laws. The decision of the arbiter shall be final and conclusive upon the parties hereto, and shall be enforceable in a court of competent jurisdiction. Each party to the arbitration shall pay the compensations, costs, fees and expenses of its own witnesses, exhibits and counsel. The compensation, costs and expenses of the arbitrator, if any, shall be borne equally by the parties hereto.

- (B) Pending the award of the arbiter, there shall be no interruption in the transaction of business under this Agreement, and all payments in respect thereto shall be made in the same manner as prior to the arising of the dispute until the matter in dispute shall have been fully determined by arbitration, and thereupon such payment or restitution shall be made as required by the decision or award of the arbiter.
- (C) All proceedings, testimony, submissions of the parties and award of the arbiter shall be private and confidential between the parties and shall not be disclosed to another party, except in connection with a judicial action to enforce, vacate or modify the arbitration award or as required by law, but under the strictest confidentiality agreements or protective order the party can obtain.

**Section 20. SUCCESSORS AND ASSIGNS**

- (A) Except as provided herein, neither this Agreement (including the documents and instruments referred to herein) nor any of the rights, interests or obligations hereunder, shall be assigned by any party, including by operation of law, without the prior written consent of the other party(ies), except to a controlled subsidiary, or in the case of CWRV, a controlled subsidiary of its parent company.
- (B) Any party without the consent of the other parties may assign all of its rights and obligations under this Agreement only to any successor in the event of a merger, consolidation, sale of all or substantially all its assets, if such assignee executes and delivers to the other party(ies) hereto an agreement reasonably satisfactory in form and substance to such other party(ies) under which such assignee, which is reasonably satisfactory to the other party(ies), assumes and agrees to perform and discharge all the obligations and



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liabilities of the assigning party, provided that any such assignment shall not relieve the assigning party from the performance and discharge of such obligations and liabilities.

**Section 21. NOTICE**

Any notice required or permitted to be given by one party to another under this Agreement shall be deemed given on the date sent by certified mail, or by such other means as the parties may agree, and shall be addressed as follows:

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If to User      Vice President, Transportation Operations, and  
Vice President, Strategic Planning  
NORFOLK SOUTHERN RAILWAY COMPANY  
Three Commercial Place  
Norfolk, VA 23510-2191

If to Owner.    President  
COMMONWEALTH RAILWAY INCORPORATED  
4337 Pablo Oaks Court  
Suite 104  
Jacksonville, FL 32224

with a copy to  
General Counsel  
Genesee & Wyoming Inc  
66 Field Point Road, 2<sup>nd</sup> floor  
Greenwich, CT 06830

Any party may provide changes in the above addresses to the other parties by personal service or U S mail.

**Section 22. FORCE MAJEURE**

Owner shall not be responsible to User and User shall not be responsible to Owner for delays or failure to perform under this Agreement if such delays or failure to perform are covered by circumstances beyond its control, including, but not limited to, Acts of God, floods, storms, earthquakes, hurricanes, tornadoes, or other severe weather or climatic conditions, acts of public enemy, war, blockade, insurrection, vandalism or sabotage, fire, accident, wreck, derailment, washout or explosion, strike, lockout or labor disputes experienced by the parties hereto, embargoes or AAR service orders, Federal Railroad Administration (FRA) orders, or governmental laws, orders or regulations.

**Section 23. CONFIDENTIALITY**

The provisions of this Agreement are confidential and may not be disclosed by either party to a third party during the term of this Agreement except (i) to the Commonwealth of Virginia and any other party entitled to equal access to the Subject Trackage to the extent required to establish that access is equal; (ii) as required by statute, regulation or court order; (iii) to a parent, affiliate, subsidiary company or attorney and/or advisers of either party, or (iv) to an auditing firm retained by either party that has provided written assurance to abide by these confidentiality provisions

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**Section 24. INDEMNITY COVERAGE**

As part of the consideration hereof, each party hereby agrees that each and all of its indemnity commitments in this Agreement in favor of the other parties shall also extend to and indemnify the parent corporation, subsidiaries, affiliates and partnerships of such other parties, and all of their respective directors, officers, agents, employees and partners

**Section 25. GENERAL PROVISIONS**

- (A) This Agreement and each and every provision hereof are for the exclusive benefit of the parties hereto and not for the benefit of any other party. Nothing herein contained shall be taken as creating or increasing any right of any other party to recover by way of damages or otherwise against any of the parties hereto.
- (B) This Agreement contains the entire understanding of the parties hereto and supersedes any and all oral understandings between the parties
- (C) No term or provision of this Agreement may be changed, waived, discharged or terminated except by an instrument in writing and signed by all parties to this Agreement
- (D) All words, terms and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words terms and phrases in the railroad industry.
- (E) All Article headings are inserted for convenience only and shall not affect any interpretation of this Agreement
- (F) As used in this Agreement, whenever reference is made to the trains, locomotives, cars or equipment of, or in the account of, one of the parties hereto (CWR, for itself and, for the purpose of this Agreement, any other carrier[s]), such expression means the trains, locomotives, cars and equipment in the possession of or operated by one of the parties (CWR, for itself and, for the purpose of this Agreement, any other carrier[s]) and includes such trains, locomotives, cars and equipment which are owned by, leased to, or in the account of such party (CWR, for itself and, for the purpose of this Agreement, any other carrier[s]). Whenever such locomotives, cars or equipment are owned or leased by one party to this Agreement (CWR, for itself and, for the purpose of this Agreement, any other carrier[s]) and are in the possession or account of another party to this Agreement (CWR, for itself and, for the purpose of this Agreement, any other carrier[s]), such locomotives, cars and equipment shall be considered

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those of the other party under this Agreement (CWRV, for itself and, for the purpose of this Agreement, any other carrier[s]).

- (G) This Agreement is the result of mutual negotiations of the parties hereto, none of whom shall be considered the drafter for purposes of contract construction

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written

WITNESS

COMMONWEALTH RAILWAY  
INCORPORATED

\_\_\_\_\_ By \_\_\_\_\_  
Title

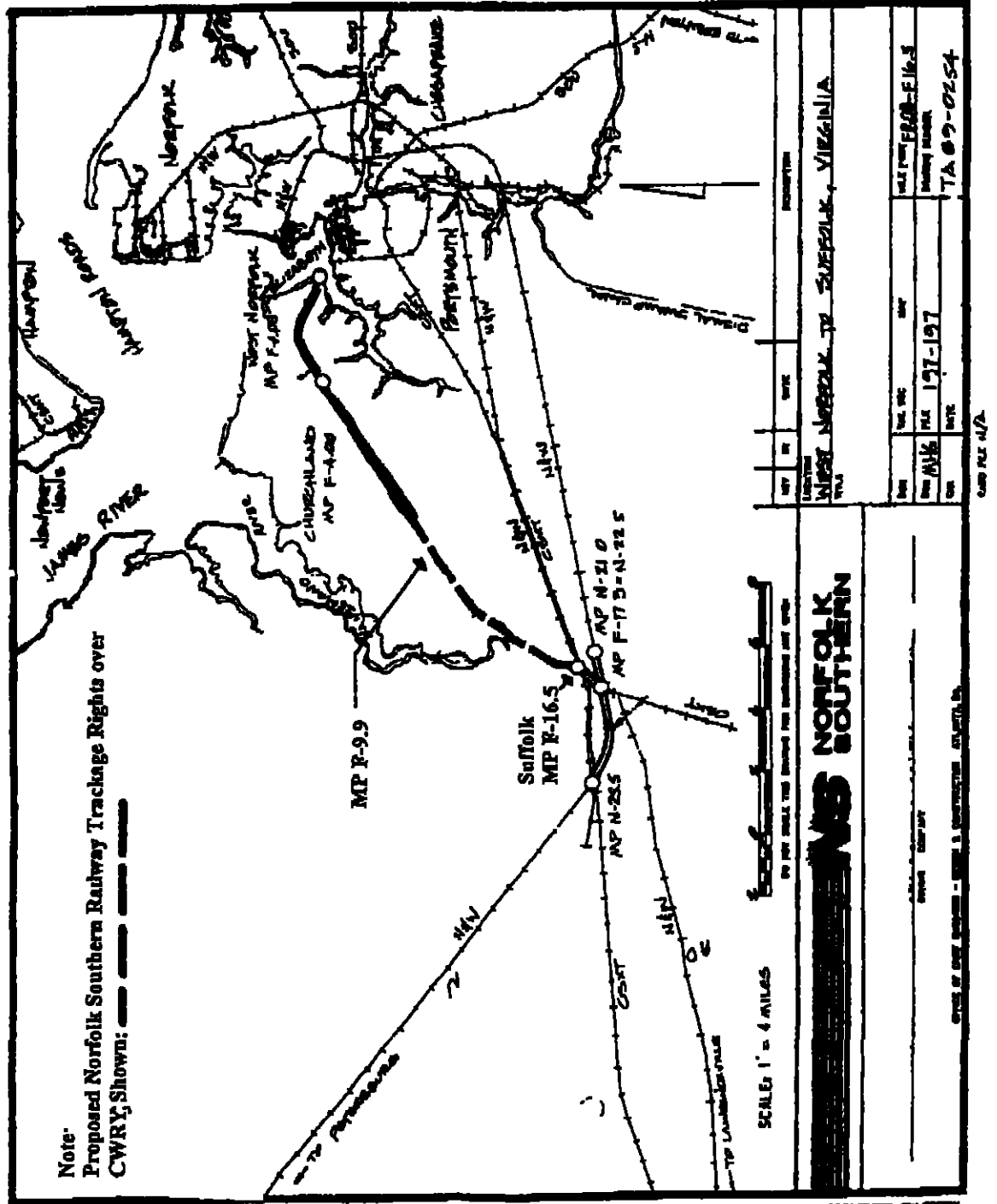
WITNESS

NORFOLK SOUTHERN RAILWAY COMPANY

\_\_\_\_\_ By \_\_\_\_\_  
Title

## LETTERS

## Proposed Norfolk Southern Railway Trackage Rights over CWRV Shown: ~~new~~ ~~new~~ ~~new~~ ~~new~~



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**EXHIBIT 2**

**(Fast Track Arbitration Provisions)**

**[STILL UNDER DISCUSSION]**